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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Iraq under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Iraq under article 29 (1) of the Convention (CED/C/IRQ/1) at its 140th and 141st meetings (CED/C/SR.140 and 141), held on 7 and 8 September 2015. At its 151st meeting, held on 16 September 2015, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Iraq under article 29 (1) of the Convention and the information contained therein. The Committee appreciates the constructive dialogue held with the delegation from the State party on the measures taken to implement the provisions of the Convention. In addition, the Committee thanks the State party for its written replies (CED/C/IRQ/Q/1/Add.1) to the list of issues (CED/C/IRQ/Q/1), which were supplemented by the delegation's responses and the additional information provided in writing.

B. Positive aspects

3. The Committee commends the State party for having ratified and/or acceded to almost all of the United Nations core human rights instruments; although it notes that the State party has not ratified and/or acceded to most of their optional protocols.

4. The Committee also commends the State party on the measures adopted in areas related to the Convention, including:

(a) The Iraqi Supreme Criminal Tribunal Act (Act No. 10 of 2005);

(b) The High Commission for Human Rights Act (Act No. 53 of 2008);

(c) The Protection of Mass Graves Act (Act No. 5 of 2006).

5. The Committee notes with satisfaction that the State party has extended an open invitation to all special procedure mandate holders of the Human Rights Council to visit the country.

* Adopted by the Committee at its ninth session (7-18 September 2015).

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C. Principal subjects of concern and recommendations

6. The Committee, while conscious of the numerous and serious challenges faced by the State party, considers that the legislation in force, its implementation and the performance of some of the competent authorities are not in full compliance with the obligations under the Convention. In particular, the Committee is concerned at allegations of a situation of widespread disappearances in significant parts of the State party's territory, many of which may be qualified as enforced disappearances and some of which occurred after the Convention's entry into force. The Committee calls upon the State party to implement its recommendations, which are made in a constructive spirit of cooperation, in order to ensure that the Convention is fully implemented de jure and de facto. In this respect, the Committee encourages the State party to use the fact that certain legislative initiatives, in particular the bill to combat enforced disappearance and torture, are currently under consideration as an opportunity to implement the recommendations of a legislative nature made in these concluding observations and ensure that its legislative framework is fully in accordance with the Convention.

General information

Urgent action procedure

7. The Committee appreciates the State party's cooperation in the framework of its urgent action procedure and takes note of the information provided in relation to the authorities involved in processing requests for urgent action (art. 30).

8. **The Committee calls upon the State party to enhance its cooperation with the Committee within the framework of its urgent action procedure and to adopt all measures necessary to guarantee immediate processing and regular follow-up for all urgent actions and requests for interim protection measures transmitted by the Committee.**

Individual and inter-State communications

9. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention (arts. 31 and 32).

10. **The Committee encourages the State party to recognize the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, respectively, with a view to strengthening the framework for protection against enforced disappearances provided for in the Convention.**

Definition and criminalization of enforced disappearance (arts. 1-7)

Statistics on persons subjected to enforced disappearance

11. While being aware of the serious challenges that the State party has been facing, the Committee is concerned at the lack of accurate and disaggregated statistical information produced by the State party on disappeared persons, in particular on persons subjected to enforced disappearance (arts. 1, 3, 12 and 24).

12. **The State party should take the steps necessary to generate accurate statistics on persons subjected to enforced disappearance that can be used to devise comprehensive and coordinated public policies for the prevention, investigation,**

punishment and elimination of this abhorrent crime, and to guarantee the rights to the truth and reparation. In this respect, the State party should consider establishing a single nationwide register of forcibly disappeared persons, which includes cases perpetrated in the past and, as a minimum: (a) provides exhaustive and detailed information about all cases, including information about the sex, age, nationality and ethnic group or religious affiliation of the disappeared person and the place and date of the disappearance; (b) includes information that can be used to determine whether the case in question is one of enforced disappearance (art. 2 of the Convention) or a disappearance perpetrated without any involvement of State agents (art. 3 of the Convention); (c) facilitates the generation of statistical data on cases of enforced disappearances, including cases that have been clarified; (d) contains information based on clear, consistent criteria; and (e) is filled promptly and in a consistent and exhaustive manner and updated on a regular basis.

The offence of enforced disappearance

13. The Committee is concerned that an autonomous offence of enforced disappearance has not yet been incorporated into the State party's legislation. In addition, the Committee notes that the Iraqi Supreme Criminal Tribunal Act No. 10 criminalized enforced disappearance as a crime against humanity, although only in relation to offences committed between 1968 and 2003 (arts. 2, 4, 5, 6 and 7).

14. **The Committee recommends that the State party adopts the legislative measures necessary to ensure that, as soon as possible:**

(a) **Enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties which take account of its extreme seriousness;**

(b) **Enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention and regardless of the date of perpetration.**

Criminal responsibility of superior officials and due obedience

15. The Committee notes with concern that the legislation in force is not in full compliance with the obligation arising under article 6 (1) (b) of the Convention, relating to the criminal responsibility of superiors. Furthermore, the Committee is concerned at the potential implications that article 40 of the Criminal Code, establishing that an act is not an offence if a public official or public servant commits the act in implementation of an order from a superior which they are obliged or feel obliged to obey, may have on the implementation of the obligation to bring to justice all those involved in the perpetration of enforced disappearances (art. 6).

16. **The Committee recommends that the State party take the legislative measures necessary to ensure that domestic legislation specifically provides for: (a) the criminal responsibility of superiors in accordance with article 6 (1) (b) of the Convention; and (b) the prohibition of invoking superior orders or instructions to justify an offence of enforced disappearance in accordance with article 6 (2) of the Convention.**

Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8-15)

Jurisdiction

17. The Committee notes with concern that the provisions of the Criminal Code governing the jurisdiction of Iraqi courts are not in accordance with the obligations stemming from article 9 of the Convention (art. 9).

18. **The Committee recommends that the State party adopt the legislative measures necessary with a view to establishing its competence to exercise jurisdiction over the acts of enforced disappearance in the terms set forth in article 9 (1 and 2) of the Convention.**

Allegations of cases of enforced disappearances

19. The Committee observes that, in five cases, the Iraqi Supreme Criminal Tribunal has convicted former senior regime officials for enforced disappearance as a crime against humanity in relation to offences perpetrated between 1968 and 2003. It regrets, however, not having received clarifications about the number of perpetrators convicted and in relation to how many victims. Taking into consideration that, as affirmed by the State party, "enforced disappearance was widely used by the dictatorial regime" (see CED/C/IRQ/1, para. 5), the Committee also regrets not receiving sufficient information about other investigations into enforced disappearances relating to the same period which would still be under way. Furthermore, the Committee is concerned at allegations making reference to numerous cases of enforced disappearance reportedly perpetrated in the State party since 2003 by State officials or by militias acting with the authorization, support or acquiescence of State officials. In this respect, it regrets not having received information on reports of enforced disappearances submitted after 2003, investigations conducted and the outcomes thereof, including sentences handed down (arts. 1, 12 and 24).

20. **The Committee recommends that the State party take all measures necessary to ensure that:**

(a) **All cases of enforced disappearance perpetrated in any territory under its jurisdiction are investigated thoroughly, impartially and without delay by an independent body, even if there has been no formal complaint;**

(b) **All those involved in the perpetration of an enforced disappearance, including military and civilian superiors and State officials giving their authorization, support or acquiescence to militias, are prosecuted and, if found guilty, punished in accordance with the gravity of their acts, even upon clarification of the fate and whereabouts of the disappeared person;**

(c) **Any State agent suspected of having been involved in the commission of an enforced disappearance is suspended for the entire duration of the investigation and that law enforcement or security forces, whether civilian or military, whose members are suspected of having been involved in the commission of an enforced disappearance do not take part in the investigation.**

21. **The Committee encourages the State party to consider establishing, under the Public Prosecution Service or other competent body, a unit specializing in the investigation of cases of enforced disappearances which is endowed with sufficient resources, particularly specially trained interdisciplinary staff, to pursue investigations and coordinate criminal prosecution policy in this field.**

Acts committed by the so-called Islamic State in Iraq and the Levant and affiliated groups

22. The Committee is fully conscious of the serious challenges faced by the State party since June 2014 due to the atrocities perpetrated by the so-called Islamic State in Iraq and the Levant and affiliated groups, which have restricted the State party's control over parts of its territory. The Committee is concerned about the numerous allegations relating to the serious human rights abuses that these groups have been reportedly perpetrating, including abductions. In this respect, the Committee takes note of the information provided by the delegation that numerous complaints and testimonies were received by the Central Criminal Court on crimes committed by these groups and that sentences were handed down (art. 3).

23. **The Committee recommends that the State party intensify its efforts to prevent any violation of the Convention, including in areas currently controlled by the so-called Islamic State in Iraq and the Levant and affiliated groups. The Committee also recommends that the State party increase its efforts with a view to ensuring that all reports of acts defined in article 2 of the Convention committed by the so-called Islamic State in Iraq and the Levant or any other group of persons without the authorization, support or acquiescence of State officials are promptly, thoroughly and impartially documented and investigated and that those responsible are brought to justice and, if found guilty, punished in accordance with the gravity of their acts. Furthermore, the Committee recommends that the State party adopt the necessary measures to ensure that all persons deprived of liberty by these groups and whose fates remain unknown are searched for and located.**

Protection of persons participating in an investigation

24. Even if it does not have detailed information about its content, the Committee notes with interest that a witness protection bill has been drafted and is currently under consideration (art. 12).

25. **The Committee recommends that the State party adopt the measures necessary to swiftly pass the witness protection bill and to ensure that the adopted text is effectively applicable to all persons referred to in article 12 (1) of the Convention. In addition, the Committee encourages the State party to establish through this legislative initiative a unit for the protection of witnesses and other persons participating in investigations into enforced disappearances, which could also be competent to implement interim measures issued by the Committee under its urgent action procedure in relation to those persons.**

Measures to prevent enforced disappearances (arts. 16-23)

Non-refoulement

26. The Committee regrets not having received detailed information about the mechanisms in place and criteria applied in the context of procedures of expulsion, return, surrender or extradition to evaluate and verify the risk that the person concerned may be subjected to enforced disappearance. In addition, the Committee observes that domestic law does not yet provide for an explicit prohibition against carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance (art. 16).

27. **The Committee recommends that the State party consider incorporating into its domestic legislation an explicit prohibition against carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance. It**

also recommends that the State party adopt the measures necessary to guarantee that the principle of non-refoulement is respected in practice, including by ensuring that, before proceeding to an expulsion, return, surrender or extradition, a thorough individual examination is carried out to determine whether there are substantial grounds for believing that the person concerned might be at risk of being subjected to enforced disappearance.

Secret detention

28. While taking note of the assertion by the State party that there are no secret detention facilities, the Committee is concerned at allegations that secret detention has actually been used, even in recent years. In this connection, the Committee is also concerned at allegations that, in some instances: (a) the right of persons deprived of liberty to immediately inform their family of their imprisonment or transfer to another institution has not been observed; and (b) officials have failed to maintain accurate records of deprivations of liberty (arts. 17, 18 and 22).

29. **The State party should adopt all the measures necessary to ensure that no person is held in secret detention, including by guaranteeing that all persons deprived of liberty are afforded, de jure and de facto, since the outset of their deprivation of liberty all the fundamental legal safeguards provided under article 17 of the Convention and other human rights treaties to which Iraq is a party. In particular, the State party should guarantee that:**

(a) **Deprivations of liberty are carried out only by officials authorized by law to arrest and detain persons and in strict compliance with the law;**

(b) **Persons deprived of their liberty are held solely in officially recognized and supervised places of deprivation of liberty;**

(c) **All persons deprived of their liberty can communicate without delay and regularly with their families, counsel or any other person of their choosing and, in the case of foreigners, with their consular authorities;**

(d) **All deprivations of liberty, without exception, are entered in uniform registers and/or records which include, as a minimum, the information required under article 17 (3) of the Convention;**

(e) **Registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officers responsible are adequately sanctioned;**

(f) **Any person with a legitimate interest can have prompt and easy access anywhere in the territory to at least the information listed in article 18 (1) of the Convention.**

30. **The State party should also investigate all allegations concerning secret detention and ensure that: (a) any existing secret detention facility or place where people are held in secret detention be immediately closed or converted into regular detention centres in accordance with the Convention and relevant international standards; (b) those involved in holding people in secret detention are brought to justice and sanctioned in accordance with the gravity of their acts; and (c) victims receive adequate reparation, including rehabilitation.**

Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

The right to receive reparation and prompt, fair and adequate compensation

31. The Committee observes with concern that measures taken to provide reparation with regard to human rights violations perpetrated in the past, in particular Acts No. 3 and No. 4 of 2006 and No. 20 of 2009, seem to mostly focus on financial compensation and, in this respect, it regrets not having received detailed information about other forms of reparation granted to victims of enforced disappearance, such as rehabilitation. The Committee also notes with concern that, apart from those pieces of legislation addressing specific situations, domestic law does not contain a system of comprehensive reparation for which the State is responsible and which includes all the reparatory measures provided for under article 24 (5) of the Convention (art. 24).

32. **The State party should consider taking the legislative measures necessary to adopt a definition of victim that conforms to that contained in article 24 (1) of the Convention, in order to ensure the full enjoyment by any individual who has suffered harm as the direct result of an enforced disappearance of the rights set forth in the Convention, including the right to reparation. The State party should also guarantee that any person who has suffered harm as a direct result of an enforced disappearance obtains reparation in accordance with article 24 (5) of the Convention and prompt, fair and adequate compensation, even if no criminal proceedings have been brought against the potential perpetrators or the latter have not been identified. In this respect, the State party should establish a comprehensive system of reparation that is fully in line with article 24 (4 and 5) of the Convention and other relevant international standards and guarantee that any measures taken in respect of the rights of victims are gender sensitive and take into account the special situation of children affected by enforced disappearances.**

The search for disappeared persons

33. The Committee takes note of the finding and, in some cases, the preservation of mass graves in different regions and from different periods, although these findings do not seem to reflect the whole extent of the situation of enforced disappearance in the State party. In addition, the Committee welcomes the enactment of the Protection of Mass Graves Act (Act No. 5 of 2006) but, taking into consideration the information provided in the replies to the list of issues (see CED/C/IRQ/Q/1/Add.1, para. 36), regrets not having received clarification on whether its amendment to make it also applicable to mass graves dating from the period after 2003 (Act No. 13 of 2015) has already been published in the Official Gazette and thus entered into force (art. 24).

34. **The State party should redouble its efforts in order to ensure that all persons who were forcibly disappeared and whose fate is not yet known are searched for and located without delay and that, in the event of death, their remains are identified, respected and returned. In this sense, it should also guarantee the effective coordination and cooperation between the authorities responsible for searching for disappeared persons and identifying their remains in the event of death, and ensure that they have the necessary financial, technical and human resources to enable them to carry out their work promptly and effectively. In addition, the State party should adopt the measures necessary to ensure the swift entry into force of the amendment to the Protection of Mass Graves Act (Act No. 13 of 2015), as well as the effective implementation of the legislative framework concerning mass graves. The Committee recalls that, in the light of article 24 (6) of the Convention, the State party should**

ensure that investigations continue until the fate of the disappeared person has been clarified.

The legal situation of disappeared persons whose fate has not been clarified and that of their relatives

35. The Committee notes with concern that the national legal framework relating to the legal situation of missing persons and that of their relatives does not accurately reflect the specific nature of the phenomenon of enforced disappearance. In particular, it is concerned that a person may be declared dead inter alia if four years have passed since he/she was reported missing. Given the continuous nature of enforced disappearance, the Committee considers that, as a matter of principle, there would be no reason to presume the death of the disappeared person until his/her fate has been clarified (art. 24).

36. **In the light of article 24 (6) of the Convention, the Committee recommends that the State party adopt the measures necessary to ensure that the legal situation of disappeared persons and that of their relatives, in areas such as social welfare, financial matters, family law and property rights, is appropriately addressed without the need to have to declare the disappeared person dead. In this respect, the Committee encourages the State party to set up a procedure to obtain a declaration of absence as a result of enforced disappearance.**

Legislation concerning the wrongful removal of children

37. The Committee notes with concern that in the legislation in force there are no provisions that specifically criminalize the actions relating to the wrongful removal of children referred to in article 25 (1) of the Convention (art. 25).

38. **The Committee recommends that the State party adopt the legislative measures necessary to make the actions referred to in article 25 (1) of the Convention specific offences and that it establish penalties for such actions that are commensurate with their extreme gravity.**

D. Dissemination and follow-up

39. The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when becoming party to the Convention and other relevant international instruments. The Committee particularly urges the State party to ensure the effective investigation of all enforced disappearances and the full satisfaction of the rights of victims as set forth in the Convention.

40. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

41. The State party is encouraged to widely disseminate the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of relatives of victims, in the actions taken in line with the present concluding observations.

42. In accordance with the Committee's rules of procedure, by 18 September 2016 at the latest, the State party should provide relevant information on its implementation of the Committee's recommendations as contained in paragraphs 14, 29 and 34.

43. Under article 29 (4) of the Convention, the Committee requests the State party to submit, no later than 18 September 2018, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party to promote and facilitate the participation of civil society, in particular organizations of relatives of victims, in the preparation of this information.

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